

**BEFORE THE WESTERN WASHINGTON GROWTH  
MANAGEMENT HEARINGS BOARD**

ABENROTH, et al.,	)	
	)	No. 97-2-0060c
Petitioners,	)	
	)	COMPLIANCE
v.	)	HEARING ORDER
	)	
SKAGIT COUNTY,	)	
	)	
Respondent,	)	
	)	
and	)	
	)	
TOM and SHEILA BUGGIA, et al.,	)	
	)	
Intervenors.	)	
_____	)	

On January 23, 1998, we issued the final decision and order (FDO) in this case and ordered that Skagit County (County) take actions to remedy the noncompliant issues by July 22, 1998.

On July 22, 1998, we received a proposal from the County for addressing these compliance issues. The issues were divided into either short-term (up to 6 months) or long-term (up to 12 months) issues. The County stated that it had not acted on these issues because it had been faced with numerous obligations under the Growth Management Act (GMA, Act) which had put a major strain on the planning commission (PC) and Board of County Commissioners (BOCC). The County also reminded us that it had adopted a similar procedure for addressing the stipulated issues between Friends of Skagit County (FOSC) and the County in this case. The County had complied with that short-term schedule through the adoption of Ordinance No. 17029 and fully intended to comply with this proposed schedule as well.

On July 28, 1998, we received a response from FOOSC objecting to the County's "complete lack of compliance" with the FDO and requesting that a compliance hearing be held. On August 14, 1998, we received FOOSC's motion for a finding of additional invalidity.

The compliance hearing was held August 28, 1998, in Hearing Room C of the Skagit County Administration Building in Mount Vernon, Washington. All three board members were present. Representing Skagit County was John Moffat; representing FOOSC was Gerald Steel; representing the City of Sedro-Woolley was Gloria Rivera; and representing the Town of Hamilton was Patrick Hayden.

At the hearing, we admitted proposed exhibits 1544 through 1556. There was no denial that the County remained out of compliance. We heard oral argument on FOOSC's motion requesting that we enter an order of invalidity on the urban growth areas (UGAs) and portions of UGAs (and implementing development regulations (DRs)) that we had found out of compliance (but not invalid) in the FDO.

In the FDO we found the following UGAs and portions of UGAs (and associated DRs) out of compliance with the Act but not invalid:

1. The Big Lake UGA
2. Two portions of the Sedro-Woolley UGA:
  - a. The large open space/agricultural area in the floodway to the south of the City.
  - b. The Northern State property.
3. All land in the Hamilton UGA outside its corporate limits.
4. [A] portion of the Mount Vernon UGA:
  - a. The Salem Lutheran Church property.

Our test for invalidity on this issue is: Would continued reliance on these UGAs substantially interfere with the fulfillment of the goals of the Act?

FOOSC asserted that when the period of time that UGAs remain out of compliance becomes long, their continued validity substantially interferes with the fulfillment of the goals of the Act without any additional facts, and therefore should be declared invalid.

FOOSC further pointed out that one of the five UGA areas listed above as out-of-compliance

already had been annexed to the City of Mount Vernon. (The Salem Lutheran Church property).

FOSC concluded:

“...The appropriate remedy is to give the County the time that it believes is necessary to do its job right, but invalidate these unincorporated UGAs until the County takes appropriate action to allow the invalidity to be lifted. Invalidity will stop the vesting of urban projects in these unincorporated UGAs and should be sufficient discouragement to stop annexation of the remaining unincorporated portions of the subject UGAs.”

The County responded that FOSC had originally requested invalidity of all noncompliant UGAs, but we had found that some of those noncompliant UGAs warranted invalidity and some did not. The County asserted that FOSC had failed to show how the mere passage of time created substantial interference in those UGAs we did not previously find invalid.

Regarding the Big Lake UGA, the County pointed out that FOSC had failed to present any new evidence which was not presented at the November 1997 hearing on the merits. Since we did not find the Big Lake UGA invalid then, and since FOSC has presented no new evidence showing substantial interference, we have no reason to change our previous determination. In addition, the County produced evidence that since June 1, 1997, there has not been one new lot created in the Big Lake UGA.

**We agree with the County. Since no new evidence of substantial interference has been provided, we will not change our previous determination regarding the Big Lake UGA at this time.**

The City of Sedro-Woolley (City) presented evidence on its work to decrease the proposed size of its UGA and the justification for the remaining parcels. This proposal will soon go to the County and has been listed as a short-term issue by the County. Sedro-Woolley's brief concluded:

“...While the Board no doubt retains jurisdiction over this issue, the importance of the issue and lack of a complete record pending final presentation of the City's proposal to the County prevents the Board from making a decision based on all necessary factual information. Further, the areas of concern are either government owned (Northern State) or located in the Skagit River Floodway. There is no danger of any substantial development

applications “vesting” at the County level. These allegations are a fiction without any support in the record.”

**We agree with the City and will not change our previous determination regarding the Sedro-Woolley UGA at this time.**

The Town of Hamilton (Town) presented evidence that it was working to adopt a sub-area plan which would establish a specific plan of action for moving the Town out of the floodway by removing land in the Skagit River floodway from the Town limits and adding an area of like size to the incorporated limits of the Town, within its previously proposed extraterritorial UGAs.

The Town asked us to deny FOSC’s motion for invalidity of the Hamilton UGA. The Town requested that rather than invalidity we order that no land in the proposed UGA (outside the current Town limits) be annexed into the Town, pending completion and adoption of the Sub-area Plan.

In Ex. 1556, a June 10, 1998, letter from Margaret Fleek, Town Planner to the County, Ms. Fleek stated:

“The Sub-area Plan will not be ready in time to meet your deadlines. We are asking that you pull back the Urban Growth Area to the City Limits, reserve the population allocation, and review the matter when the Sub-area Plan is ready to go. More time is needed to do an adequate job on the plan that is required for the future of the community. This is not an issue that can be given the consideration that is necessary under the timelines of the Growth Management Hearings Board Order.”

Unlike the Sedro-Woolley UGA, the County has listed its reconsideration of the noncompliant Hamilton UGA as a long-term issue. We are concerned about the potential for vesting of urban or suburban development by the County in this grossly oversized UGA during this lengthy period.

**We therefore conclude that in order to achieve compliance the County must, within 90 days, act on the Town’s proposal to limit the UGA to the Town municipal boundary. If the County does not take this action within 90 days, we will reconsider FOSC’s motion for**

**invalidity.**

Neither FOSC nor any other party submitted a specific objection to the County’s proposed compliance schedule. Even though we are concerned about the County’s failure to timely act on these compliance issues, we accept the County’s proposed compliance schedule as follows:

Listed below are four (4) invalidity and twelve (12) noncompliance issues. Each issue is addressed as either a “short-term” or a “long-term” work program. Short-term issues are to be completed with a 6-month time frame and long-term within 12 months.

**I. Invalidity Issues**

**Short-term**

- 1. Pederson/Rundgren property in the MV UGA.

**Long-term**

- 2. Bayview UGA outside the Port of Skagit County’s property.
- 3. All C/I zones outside of the UGAs and Rural Village and any rezone to C/I and the maps that implement these zones.
- 4. CP Policy 2.1 @ page 4-35 and DR Section 7(2) of Ordinance #16559.

**II. Compliance Issues**

**A. UGAs**

**Short-term**

- 1. Sedro-Woolley UGA
  - a) Large open space/agricultural area in the floodway to the south of the City.
  - b) Northern State property
- 2. Mount Vernon UGA
  - a) Salem Luthern Church property
  - b) Pederson/Rundgren property

**Long-term**

- 3. Big Lake UGA
- 4. Bayview UGA
- 5. Hamilton UGA

## B. Commercial/Industrial Development Outside of UGAs

### Long-term

1. Allowance of rural business in NRL designation.
2. Retention of all pre-GMA zoning for C/I uses outside UGAs and Rural Villages.
3. Provision of new “floating” C/I development by way of a simple rezone. The provision contains no specific criteria to provide predictability of future land use and preclude inappropriate conversion.
4. CP Policy 2.1 @ page 4-35 and DR Section 7(2), Ordinance #16559, to the extent that new urban growth is allowed outside of UGAs and are inconsistent with SCC 14.04.270(1).
5. Lack of designation of specific lands outside UGAs which are appropriate for C/I and in compliance with the GMA, CPPs, and policies in the CP.

## C. Miscellaneous

### Short-term

1. Establish consistency between CP and SCC definition of “legal lot of record.”
2. Develop interlocal agreements or other DRs to implement the CP @ p. 4-7, Objective 3 and 4 @ page 7-9 and RCW 36.70A.110(3) for all UGAs except the Anacortes UGA.
3. Reconsider three properties for reconsideration of designation:
  - a) 9-acre parcel (Goodell)
  - b) 40-acre parcel (Lennox)
  - c) Matthiesen property

Short-term noncompliant issues must be acted upon by January 22, 1999; long-term by July 22, 1999. Status reports from the County on long-term issues are due January 22, 1999, and April 22, 1999. A compliance hearing is scheduled for March 3, 1999. At that hearing we will determine short-term issue compliance and review progress on long-term issues. If the County has not met its committed schedule or evidence is provided that development is occurring which substantially interferes with the Act, we will consider additional invalidity and a recommendation for sanctions at that time.

This is a Final Order under RCW 36.70A.300(5) for purposes of appeal.

Pursuant to WAC 242-02-832(1), a motion for reconsideration may be filed within ten days of

issuance of this final decision.

So ORDERED this \_\_\_\_ day of September, 1998.

WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

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Nan A. Henriksen  
Board Member

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Les Eldridge  
Board Member

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William H. Nielsen  
Board Member